



RECEIVED
SEP 02 2005
DEQ-SWRO

COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street Address: 355 Deadmore Street, Abingdon, Virginia 24210
Mailing Address: P.O. Box 1688, Abingdon, Virginia 24212-1688
Fax: (276) 676-4899
www.deq.virginia.gov

Robert G. Burnley
Director

Michael D. Overstreet
Regional Director
(276) 676-4800

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**Pounding Mill Quarry Corporation / Pounding Mill Plant
Registration No. 10231**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301 and 10.1 – 1184, between the State Air Pollution Control Board and Pounding Mill Quarry Corporation for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Pounding Mill Quarry Corporation / Pounding Mill Plant, Rt. 19-460, two miles east of Claypool Hill, Virginia in Tazewell County.

SECTION C: Findings of Facts and Conclusions of Law

1. Pounding Mill Quarry Corporation owns and operates a limestone crushing and screening facility at Pounding, Mill Virginia.
2. Pounding Mill Quarry Corporation was last issued a construct and operate permit on March 25, 2004 to their Virginia Stationary Source Permit Number 10231.
3. Permit Condition #16 states in part that, "Visible Emission Evaluations (VEE) in accordance with 40 CFR 60, Appendix A, Method 9 shall be conducted by the permittee on the conveyor belts (PM-BC5, WS-BC1 and WS-BC2)."... "The evaluation shall be performed, and reported within 60 days after achieving the maximum production rate at which the facility will be operated, but in no event later than 180 days after start-up of the permitted facility.
4. On June 10, 2005, Don Hilt, Department of Environmental Quality Inspector Sr. met with Pounding Mill Quarry's Ed Treadway to discuss DEQ Air Permits and Requirements. During a review of the permit for Pounding Mill Quarry / P.M. Plant Reg. #10231, certain deficiencies were discovered.
5. Pounding Mill Quarry had not performed the required VEEs within the 180 day time limit after their permit was issued 3-25-04. This is approximately 9 months overdue.
6. A Notice of Violation was issued on June 14, 2005 to Pounding Mill Quarry / Pounding Mill Plant, by Certified Mail-Return Receipt Requested, that DEQ had reason to believe that a violation of Air Pollution Law and Regulations 9 VAC 5-170-160.A had occurred.
7. On June 17, 2005 Pounding Mill Quarry representative Mr. Ed Treadway, met with DEQ staff members Ms. Crystal Bazyk, and Mr. Don Hilt, at the DEQ-SWRO in Abingdon, Virginia to discuss the Notice Of Violation. Mr. Treadway stated that he has scheduled a consultant to do the required VEEs on June 23, 2005. It was verified later that the VEEs were performed on June 23, 2005 and the reports received by DEQ on August 4, 2005.
8. Pounding Mill Quarry proposed a potential Supplemental Environmental Project (SEP) to DEQ on July 26, 2005. Upon review the DEQ has approved the proposed SEP by Pounding Mill Quarry. Pounding Mill Quarry may spend 75% of the civil charge toward the cost of the SEP.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders Pounding Mill Quarry and Pounding Mill Quarry agrees to pay a civil charge of \$3108.00 in settlement of the violation cited in this Order.

1. \$777.00 (25%) of this civil charge shall be paid within 30 days of the effective date of this Order. Payment must indicate that the civil charge is pursuant to Pounding Mill Quarry Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

For purposes of properly identifying its payment, Pounding Mill Quarry Corporation shall include with the check, a notification of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.

2. \$2331.00 of this civil charge shall be satisfied upon completion by Pounding Mill Quarry of a Supplemental Environmental Project (SEP) pursuant to the Virginia Code 10.1-1186.2 and as described in Appendix A of this Order.
3. In the event that the SEP is not performed as described in Appendix A, upon notification by the Department, Pounding Mill Quarry Corporation shall pay the amount specified in paragraph 2 of Section D above, (which is the remaining 75% of the civil charge), within 30 days of such notification according to procedures specified in paragraph 1 above, unless an alternate project has been agreed upon by the parties.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Pounding Mill Quarry for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Virginia Stationary Source Permit to Operate dated March 25, 2004.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Pounding Mill Quarry as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

4. For purposes of this Order and subsequent actions with respect to this order, Pounding Mill Quarry admits the jurisdictional allegations, factual findings, or conclusions of law contained herein.
5. Pounding Mill Quarry consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Pounding Mill Quarry declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 et seq., and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by Pounding Mill Quarry to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Pounding Mill Quarry shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Pounding Mill Quarry must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Pounding Mill Quarry shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

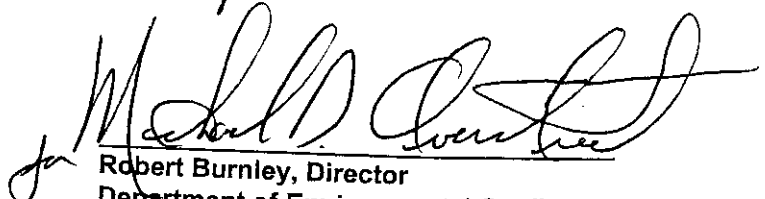
11. This Order shall become effective upon execution by both the Director or his designee and Pounding Mill Quarry. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board determines Pounding Mill Quarry has met all the conditions of the order and the Company is thereafter notified of compliance by the Department. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Pounding Mill Quarry from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

APPENDIX A

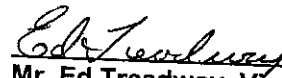
1. The Supplemental Environmental Project to be performed by Pounding Mill Quarry Corporation is to (a) Increase the velocity of the dust collector fan at the sand plant to expand the collection to a larger area . (b) Install a pug mill to feed into an auger for the transfer of material to the haul unit at the lime bin load out.
2. The cost of the SEP to Pounding Mill Quarry shall not be less than \$2331.00. In the event that the final cost of the SEP is less than this amount, Pounding Mill Quarry shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed by the Department.
3. Pounding Mill Quarry acknowledges that it is solely responsible for completion of the SEP project. Any delegation of funds, tasks, or otherwise by Pounding Mill Quarry to a third party, shall not relieve Pounding Mill Quarry of its responsibility to complete the SEP as contained in this Order.
4. The SEP shall be completed by Pounding Mill Quarry within 60 days after the Consent Order is issued.
5. Pounding Mill Quarry shall provide the Director, Southwest Regional Office of DEQ with verification of completion of the SEP by contacting the Southwest Regional Office of DEQ with the completion date. The project completion verification must be submitted to the Department within 7 days after the project completion date. Upon notification of the completion of the SEP by Pounding Mill Quarry, DEQ staff will perform a site inspection to verify project completion.
6. Pounding Mill Quarry shall submit verification to the Director, Southwest Regional Office of DEQ in the form of contractor invoices and/or billing receipts of the final overall cost of the SEP within 30 days of the project completion date.
7. In the event that Pounding Mill Quarry publicizes the SEP or the results of the SEP, Pounding Mill Quarry shall state in a prominent manner the project is part of a settlement for enforcement action.
8. The Director, Southwest Regional Office of DEQ has the sole discretion whether the SEP has been completed in a satisfactory manner.

By its signature below, Pounding Mill Quarry voluntarily agrees to the issuance of this Order.

And it is ORDERED this day of 9/6, 2005


Robert Burnley, Director
Department of Environmental Quality

Pounding Mill Quarry Corporation voluntarily agrees to the issuance of this Order.


Mr. Ed Treadway, Vice President
Pounding Mill Quarry

Date: Sept. 06, 2005

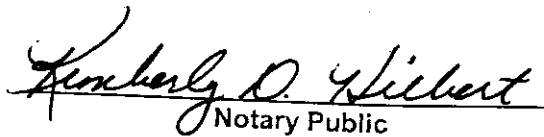
Commonwealth of Virginia

City/County of Tazewell

The foregoing document was signed and acknowledged before me this 1st day of

September, 2005 by Mr. Ed Treadway on behalf of Pounding Mill Quarry

Date: 9-1-05


Notary Public

My commission expires: May 31, 2009